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EXAMINERS

12  
13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA  
15

16  
17 STEPHANIE ENYART,

18 Plaintiff,

19 v.

20 NATIONAL CONFERENCE OF BAR  
EXAMINERS, INC.,

21 Defendant.  
22

Case No. C09-05191-CRB

**POSITION OF DEFENDANT NATIONAL  
CONFERENCE OF BAR EXAMINERS ON  
POTENTIAL INJUNCTION SOUGHT BY  
PLAINTIFF FOR THE MBE PORTION OF  
THE FEBRUARY 2011 CALIFORNIA BAR  
EXAMINATION DURING PENDING NINTH  
CIRCUIT APPEAL**

**JUDGE: HON. CHARLES R. BREYER**

23  
24 1. On December 3, 2010, the Court heard Defendant National Conference of Bar  
25 Examiners' ("NCBE") Motion for Continuance of Trial Date and Associated Pretrial Deadlines  
26 (the "Continuance Motion"). At the hearing, the Court requested that NCBE provide a written  
27 statement of its position as to an additional preliminary injunction which may be sought by  
28 Plaintiff Stephanie Enyart for the Multistate Bar Examination ("MBE") portion of the February

1 2011 California Bar Examination while the Consolidated Appeals of this Court's prior Orders are  
 2 pending before the Ninth Circuit Court of Appeals. This submission sets forth the NCBE's  
 3 position on this issue.

4 2. NCBE's position is as follows: NCBE continues to believe that the prior  
 5 injunctions entered in this matter by the Court were in error. NCBE further believes that  
 6 additional injunctions are not warranted by law. Nevertheless, in the interest of judicial economy,  
 7 NCBE would file a Statement of Non-opposition pursuant to Local Rule 7-3(b) to a renewed  
 8 motion by Plaintiff Stephanie Enyart for an injunction for the MBE portion of the February 2011  
 9 California Bar Examination, **provided that** all of the following conditions are met:

10 a. Any such motion seeks the same accommodations which are set forth in  
 11 Section 2 of this Court's June 22, 2010 Order Granting Second Preliminary Injunction (Docket  
 12 No. 89), and is subject to a \$5,000 bond.

13 b. Ms. Enyart, through her counsel, agrees in a filing with this Court that Ms.  
 14 Enyart will not assert or argue here or in the Ninth Circuit that NCBE's Statement of Non-  
 15 opposition moots the Consolidated Appeal before the Ninth Circuit or any subsequent appeal(s),  
 16 or otherwise prejudices in any way NCBE's right to appeal an additional preliminary injunction  
 17 entered in favor of Ms. Enyart. NCBE's counsel is informed and believes, based upon  
 18 communications with Ms. Enyart's counsel, that Ms. Enyart is willing to provide such a  
 19 representation to the Court.

20 c. The Ninth Circuit Court of Appeals has not issued its decision on the  
 21 Consolidated Appeals as of the date of the February 2011 California Bar Examination. NCBE  
 22 proposes the following process in the event the Ninth Circuit Court of Appeals issues a decision  
 23 on the Consolidated Appeals prior to the February 2011 Bar Examination: the Parties shall notify  
 24 the Court immediately upon such a ruling; the Parties shall promptly meet and confer as to any  
 25 injunction for the February Bar Examination; and the Parties shall contact the Court for a  
 26 telephonic hearing if they cannot agree upon the terms of an injunction for the February 2011 Bar  
 27 Examination.

28 3. Through counsel, Ms. Enyart has asked NCBE to provide additional

1 accommodations relating to the administration of the February 2010, including additional  
 2 administrative and technical steps relating to the computer-based administration of the MBE to  
 3 Ms. Enyart. The Parties are currently meeting and conferring as to whether such  
 4 accommodations can and should be taken in connection with a computer-based administration of  
 5 the MBE during the February 2011 California Bar Examination should the Court order any such  
 6 administration. The Parties will inform the Court by December 22, 2010, whether any such steps  
 7 have been agreed upon and, if so, the nature of any such proposed actions for inclusion in any  
 8 further Order from this Court.

9 4. In light of the above, NCBE renews the request set forth in the Continuance  
 10 Motion that the trial date in this matter, and all associated pretrial deadlines (including any  
 11 discovery cut-off deadlines), be continued from their currently scheduled dates. Pursuant to this  
 12 Court's Minute Order from the December 3, 2010 hearing on the Continuance Motion, NCBE  
 13 agrees to a stay of discovery while the Parties await a ruling from the Ninth Circuit. Finally,  
 14 NCBE respectfully requests that the Court set a Case Management Conference for the purpose of  
 15 setting a trial date, and all associated pretrial deadlines, after a ruling is received from the Ninth  
 16 Circuit Court of Appeals.

17 Respectfully submitted,

18 COOLEY LLP

19 Dated: December 10, 2010  
 20 *I, Wendy Brenner, am the ECF User whose*  
 21 *ID and password are being used to file this*  
 22 *Position of Defendant NCBE On Potential*  
 23 *Injunction. In compliance with General*  
 24 *Order 45.X.B., I hereby attest that Robert*  
 25 *Burgoyne has concurred in this filing.*

26 /S/

27 WENDY J. BRENNER (198608)  
 28 Attorneys for NCBE

29 Dated: December 10, 2010

30 FULBRIGHT & JAWORSKI L.L.P.

31 /S/

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